

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TATIA LIPE,

Plaintiff,

v.

Civ. No. 23-899 GBW/JMR

ALBUQUERQUE PUBLIC SCHOOLS  
and NEW MEXICO DEPARTMENT  
OF PUBLIC EDUCATION,

Defendants.

**ORDER STRIKING AMENDED COMPLAINT AND DISMISSING WITH  
PREJUDICE PLAINTIFF'S AMERICANS WITH DISABILITIES ACT CLAIM  
AGAINST DEFENDANT NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

THIS MATTER is before the Court *sua sponte* following Plaintiff's filing of an Amended Complaint (*doc. 47*). The Court strikes Plaintiff's Amended Complaint for failure to comply with the requirements of Rule 15(a)(2) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 15(a)(1)-(2) states:

- (1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course no later than:
  - (A) 21 days after serving it, or
  - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
- (2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely grant leave when justice so requires.

Plaintiff is far past her deadline to amend as a matter of course. Thus, Plaintiff may amend her Complaint only with the opposing party's written consent or the

court's leave. The Court is unaware of any written consent by all parties agreeing to an amendment, so leave of the Court is required. Plaintiff has failed to file a motion seeking leave to amend but has instead simply filed the Amended Complaint. This filing violates the federal rules and this Court's local rules. *See* Fed. R. Civ. P. 15(a); D.N.M.LR-Civ. 15.1. Accordingly, the Court will strike Plaintiff's Amended Complaint.

Additionally, on August 27, 2024, the Court filed an Order granting Defendant New Mexico Public Education Department's ("PED") Motion to Dismiss (*doc. 36*), dismissing with prejudice Plaintiff's New Mexico Whistleblower Protection Act claim against Defendant PED and dismissing without prejudice Plaintiff's Americans with Disabilities Act claim against Defendant PED. *See doc. 46* at 11. The Order stated:

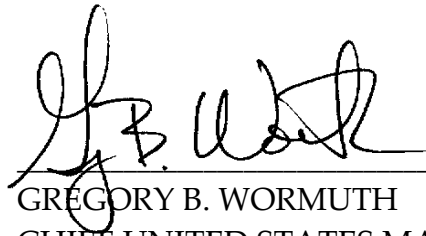
Plaintiff is granted **seven (7) days from the entry of this Order** to file a motion to amend in accordance with the guidelines described above. If Plaintiff chooses to file a motion to amend and the motion is opposed, the motion will be subject to futility analysis. If no motion to amend is timely filed, the dismissal of the American with Disabilities Act claim (Count I) against Defendant PED will be converted to a dismissal WITH PREJUDICE.

*Id.* (underlined emphasis added).

Plaintiff's deadline to file a motion to amend was September 3, 2024. Given that Plaintiff has not timely filed a motion to amend, the Court will dismiss with prejudice Plaintiff's Americans with Disabilities Act claim (Count I) against Defendant PED.

IT IS THEREFORE ORDERED that Plaintiff's Amended Complaint (*doc. 47*) is STRIKEN from the record.

IS FURTHER ORDERED that Plaintiff's Americans with Disabilities Act claim (Count I), *see doc. 1* ¶¶ 11-17, against Defendant New Mexico Public Education Department is dismissed WITH PREJUDICE.

A handwritten signature in black ink, appearing to read 'G. B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH  
CHIEF UNITED STATES MAGISTRATE JUDGE  
**Presiding by Consent**